

United States District Court

for the
Western District of New York

United States of America

v.

Case No. 20-mj-1003

FRANKIE L. COOK

Defendant

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

COUNT 1

On or about the date of February 26, 2020, in the Western District of New York, the defendant did knowingly and unlawfully possess with intent to distribute and distribute more than 40 grams of a mixture and substance containing N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide (fentanyl), a Schedule II controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(B).

COUNT 2

On or about the date of February 26, 2020, in the Western District of New York, the defendant did, knowing that he had been convicted of a crime punishable by imprisonment term exceeding one year, knowingly and unlawfully possess a firearm, that is, a SCCY Model CPX-1 9mm bearing serial number 437778 loaded with six rounds of 9mm ammunition, said firearm having been shipped and transported in interstate commerce; in violation of Title 18, United States Code, Section 922(g).

COUNT 3

On or about the date of February 26, 2020, in the Western District of New York, the defendant did knowingly and unlawfully carry a firearm, that is, a SCCY Model CPX-1 9mm bearing serial number 437778 loaded with six rounds of 9mm ammunition, in furtherance of a drug trafficking crime for which he may be prosecuted in a court in the United States, that is, possession with intent to distribute 40 grams of a mixture and substance containing N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide (fentanyl), a Schedule II controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(B); all in violation of Title 18, United States Code, Section 924(c).

This Criminal Complaint is based on these facts:

☒ Continued on the attached sheet.


Complainant's signature

ROBERT COLUNGA
Special Agent
Federal Bureau of Investigation
Printed name and title

Sworn to before me and signed in my presence.

Date: March 3, 2020 JJP


Judge's signature

City and State: Buffalo, New York

HONORABLE JEREMIAH J. MCCARTHY
UNITED STATES MAGISTRATE JUDGE
Printed name and title

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF ERIE)
CITY OF BUFFALO)

SS:

I. INTRODUCTION

I, **Robert Colunga**, Special Agent of the Federal Bureau of Investigation, United States Department of Justice, having been duly sworn, states as follows:

1. I am a Special Agent of the Federal Bureau of Investigation (“FBI”) of the United States Department of Justice. As such, I am an “investigative or law enforcement officer of the United States” within the meaning of 18 U.S.C. § 2510(7), that is, an officer of the United States who is empowered by law to conduct investigations of and to make arrests for offenses enumerated in 18 U.S.C. § 2516.

2. I have served as an FBI Special Agent since November of 2019.¹ During that time, I have participated in investigations involving drug trafficking and organized crime matters. In addition, I have had the opportunity to work with several other FBI agents and other law enforcement agents and officers of varying experience levels, who have also investigated drug trafficking networks, with regard to the manner in which controlled substances are obtained, diluted, packaged, distributed, sold and used within the framework of drug trafficking in the Western District of New York. As a result of my experience, I am

¹ I was also previously employed from 2014 to 2019 by the Federal Bureau of Investigation as a Police Officer in the Uniform Division.

familiar with how controlled substances are obtained, diluted, packaged, distributed, sold, and used in the framework of drug trafficking in the Western District of New York and how drug traffickers utilize wire communications to facilitate their illegal activities. My investigative experience detailed herein, and the experiences of other law enforcement agents, who are participating in this investigation, serve as the basis for the opinions and conclusions set forth herein.

3. This affidavit is being submitted for a limited purpose, that is, a probable cause determination, and therefore I have not presented all of the facts of this investigation to date. I have set forth only the information I believe to be necessary to establish probable cause. The facts in this affidavit come from my personal observations, my training and experience, and information obtained from law enforcement officers and witnesses. This affidavit is intended to show merely that there is sufficient probable cause for the requested warrant and does not set forth all of my knowledge about this manner.

4. I make this affidavit in support of a criminal complaint charging **FRANKIE L. COOK** with violating Title 18, United States Code, 922(g)(1) (felon in possession of a firearm), Title 18, United States Code, 924(c)(1)(A)(i) (Possessing a firearm in furtherance of drug trafficking) and Title 21, United States Code, 841(a)(1) (Possession with intent to distribute, and to distribute, a mixture and substance containing fentanyl, a scheduled II controlled substance, in violation of 21 U.S.C. 841(a)(1)).

II. PROBABLE CAUSE

5. On February 26, 2020, Erie County Sheriff's Office (ECSO) Narcotics Detectives responded to the address of 484 Dartmouth Avenue, Buffalo, New York, 14215, to assist Erie County Probation with the search of this residence. 484 Dartmouth Avenue is the address where COOK is registered with Erie County Probation. During the search, Erie County Probations Officers and ECSO Narcotics Detectives discovered the following:

- a. Two (2) knotted plastic bags containing a grayish powdered substance believed to be fentanyl, which was sectioned into numerous smaller plastic bags; which weighed approximately 256 grams
- b. A knotted plastic bag containing cocaine base; which weighed approximately 8 grams
- c. Four (4) boxes of "Surefresh" sandwich bags;
- d. Three (3) digital scales;
- e. Surgical masks;
- f. Rubber gloves;
- g. A food grinder with drug residue;
- h. Two bags of rubber bands;
- i. One semiautomatic firearm SCCY Model CPX-1 9mm bearing Serial Number 437778 loaded with six live rounds of 9mm ammunition;
- j. One 45 caliber magazine;
- k. Plastic bag containing a box of 45 caliber ammunition and loose ammunition;
- l. One box of 9mm caliber ammunition;
- m. One box of 45 caliber ammunition;
- n. One Plastic bag containing loose rounds of ammunition.

6. Furthermore, a pat down search of **COOK** resulted in the discovery of a plastic bag containing powder residue suspected to be illegal narcotics. Based on the officers' experience, training, and observations, the above mentioned items seized from the search of 484 Dartmouth Avenue are indicative of drug possession, packaging and distribution. The suspected narcotics recovered were not field tested due to officer safety concerns. Erie County Sheriff's office Narcotics Detectives submitted the suspected narcotics to the Erie County Central Police Services Laboratory on February 26, 2020. As of the date of this affidavit, those results are still pending.

7. Based upon my experiences and observations working with several other FBI agents and other law enforcement agents and officers of varying experience levels, who have also investigated drug trafficking networks, with regard to the manner in which controlled substances are obtained, diluted, packaged, distributed, sold and used within the framework of drug trafficking in the Western District of New York, firearms are used as a means for protection of the narcotic dealer, the protection of the money obtained from narcotic transactions and the protection of the narcotics themselves. A request for interstate nexus was issued to The Bureau of Alcohol, Tobacco, Firearms and Explosives for the semiautomatic firearm SCCY Model CPX-1 9mm bearing Serial Number 437778 on March 02, 2020. The company SCCY does not manufacture guns in the state of New York.

8. On December 04, 2019 **COOK** was convicted upon a plea of guilty to attempted criminal possession of a weapon, second degree (New York Penal Law 265.03 sub


03, Class D Felony), (Other than a person's home/business) and was sentenced to five years of probation on February 11, 2020.

9. ECSO detectives subsequently arrested **COOK** for possession of the illegal contraband as a result of the search of his residence performed on February 26, 2020. Also of note, two minors, were present during the time of the search and arrest. ECSO notified and reported the suspected child abuse/maltreatment to New York State Office of Children and Family Services. There were no other occupants inside the home and custody of the children were relinquished to the children's grandmother.

10. **WHEREFORE**, based upon the foregoing, I respectfully submit that there is probable cause to believe that **FRANKIE L. COOK** did knowingly, willfully, and unlawfully violate Title 18, United States Code, 922(g)(1) (felon in possession of a firearm), Title 18, United States Code, 924(c)(1)(A)(i) (Possessing a firearm in furtherance of drug trafficking), and Title 21, United States Code, 841(a)(1) (Possession with intent to distribute, and to distribute, a mixture and substance containing fentanyl, a scheduled II controlled substance, in violation of 21 U.S.C. 841(a)(1).


ROBERT COLUNGA
Special Agent
Federal Bureau of Investigation

Sworn to and subscribed before me this
3rd day of March, 2020.


HON. JEREMIAH J. MCCARTHY
United States Magistrate Judge